

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4921 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

@

LAXMAN VARDHAJI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4921 of 2002
MS JAYSHREE C BHATT for Petitioner No. 1
MR AY KOGJE Ld. AGP for Respondent No. 1-3
-

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/07/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Ahmedabad City dated 9.3.2002 in exercise of powers vested in him by

sub-section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act') for the ground that the petitioner is a dangerous person and he is required to be detained otherwise his activities would affect adversely to the public order.

To brand the petitioner as 'dangerous person', the detaining authority has considered 4 criminal cases registered against the petitioner in the police station within the area under Police Commissioner, Ahmedabad City. The first offence registered on 11.2.2002 for the offence punishable under sec. 379 IPC for lifting a scooter worth Rs. 10,000/-. For this offence, he was formally arrested on 24.4.2002. The second offence registered, has been committed in the area under Gaekwad Haveli Police Station on 20.3.2002 for the offence punishable under sec. 380 and 114 of IPC. It is alleged that the petitioner had entered in the shop of gold-smith with the co-accused posing themselves as customers and ultimately lifted a small box containing gold ring worth Rs. 45,000/-. The third offence registered at Ellisbridge Police Station on 21.2.2002 for taking away the motorcycle of YAMAHA brand worth Rs. 65,000/-. On perusal of the papers, it transpires that using this very motorcycle bearing registration No. GJ-1-BS-1539 the petitioner under the abatement of the co-accused robbed gold chain during the night hours in the Maninagar area. On that very day, i.e. 21.2.2002 and on the shout of the lady victim whose gold chain was snatched, the offenders were chased and ultimately were caught. The motorcycle of above referred number was also seized from the spot from where the accused were arrested. So, considering all these four offences, the authority was satisfied subjectively that to prevent civil offences and disturbance to the public order, the petitioner requires to be detained and, therefore, detention order under challenged was passed.

Ld. AGP Mr. AY Kogje by referring the affidavit-in-reply filed by the then Police Commissioner Mr. PC Pande has argued that the subjective satisfaction has been arrived at on the strength of the documents available on record and the modus adopted by the petitioner, the authority was satisfied that the initially the petitioner lifts two wheelers from the public place and ultimately uses it in committing other more serious offences.

The petitioner has challenged the order on various grounds however, during the course of oral

submission, ld. counsel has mainly concentrated only on one point and it is submitted that even for the sake of argument, if it is accepted that the petitioner is involved in all these 4 offences his activities cannot be said to be prejudicial or would affect to the maintenance of public order. It would at the most affect the law and order. It is submitted that all the offences registered against the petitioner are mainly punishable under sec. 379 and 380 of IPC. The serious offence registered against the petitioner is punishable under sec. 392 of IPC. So, on account of one serious offence, registered against the petitioner, the less drastic remedy was possible even on the day on which the detention order was passed as the petitioner was in prison as an under-trial. It is submitted that he has not applied for bail. So, it was possible for the police to take less drastic measures then passing the order of detention mechanically. In support of her say, she has placed reliance on the decision of the Division Bench of this Court (Coram: A.P. Ravani & J.M. Panchal, JJ) in Special Criminal Application No. 1681 of 1992 decided on 3.3.1993.

She has also submitted that this Bench by referring this decision has quashed the order of detention passed by the detaining authority where the detenu was mainly involved in the theft cases. I would like to refer the relevant decision in the case of Mustakmiya Jabbarmiya Shaikh vs. Commissioner of Police, reported in 1995(2) GLR P 1268 where the Apex Court has said that while recording the subjective satisfaction, the detaining authority is supposed to weigh the balance between the maintenance of law and order and maintenance of public order. The Court further said that:-

"The Act has defined "dangerous person" in clause (c) of Sec. 2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression 'habit' or 'habitual' has, however, not been defined under the Act. According to The Law Lexicon by P. Ramanatha Aiyar, Reprint Edn. (1987). p. 499. 'habitually' means constant, customary and addicted to specified habit and the term habitual criminal may be applied to anyone who has been previously convicted of a crime to

the sentences and committed to prison more than twice. The word 'habitually' means 'usually' and 'generally'. Almost similar meaning is assigned to the words 'habit' in Aiyar's Judicial Dictionary, 10th Edn. p. 485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. In *Gopalanchari v. State of Kerala*, AIR SC 674 this Court had an occasion to deal with expressions like "bad habit", "habitual", 'desperate', 'dangerous', and 'hazardous'. This Court observed that the word habit implies frequent and usual practice. Again in *Vijay Narain Singh v. State of Bihar*, 1984(3) SCC 14 this Court construed the expression 'habitually' to mean repeatedly or persistently and observed that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit. It, therefore, necessarily follows, that in order to bring a person within the expression "dangerous person" as defined in clause (c) of sec. 2 of the Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or Chapter XVII of I.P.C. or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of I.P.C. or Chapter V of the Arms Act cannot be characterised as a habitual act referred to in Sec.2(c) of the Act."

So, on this ground, the order of detention requires to be quashed and set aside unless the detaining authority has reached to the conclusion objectively that the activities of the accused is dangerous and affect adversely in maintenance of public order, the authority cannot pass an order exercising the powers vested under sec. 3 of the PASA Act. Rest of the points are not argued and, therefore, they are not discussed.

In the result, this petition is allowed. The impugned order of detention dated 9.3.2002 passed by Police Commissioner, Ahmedabad city is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)
mandora/